IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:::

ORDER

Gopesh Kumar & Ors.
Vs.
The District & Sessions Judge, Pratapgarh

S.B. CIVIL WRIT PETITION NO.4276/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 20th November, 2006

PRESENT

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.Rakesh Arora, Advocate, for the petitioners.
Mr.Ravi Bhansali, Advocate for the respondent.

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BY THE COURT:

This writ petition has been filed by three petitioners with the prayer that the respondent District & Sessions Judge, Pratapgarh be directed to appoint them on the post of LDC on the basis of selection conducted pursuant to notification dated 15th July, 2002.

Factual matrix of the case are that an advertisement was issued by the respondent on 10th May, 2001 inviting applications for appointment against six posts of LDC. The advertisement contained stipulation to the effect that the number of posts may be increased because some vacancies are likely to occur in future on creation of a new court. A merit list was prepared on the basis of selection held pursuant to aforesaid advertisement. However, before the appointment could be given, a writ petition was filed by one Pappu Lal being D.B. Civil Writ Petition No.955/2002. Eventually this writ petition was disposed of on 26.7.2002 with the directions to the respondents to complete the process of selection. The respondent thereafter gave appointment to six candidates. Another advertisement was issued by the respondent on 15.7.2002 inviting thereby applications for recruitment/appointment against 23 posts of LDCs. It was stated that these 23 posts excluded 6 posts earlier advertised and the post of newly created Gangnar court. After completion of selection process, appointment was given to 34 candidates. According to the petitioner, a new court was created by the

Government at Gangrar on 26th May, 2001 much after the aforesaid notification was issued. Since the court had not been created at Gangrar when the advertisement was issued on 10th May, 2001, the posts which became available with the creation of such court could not be included for being advertised as anticipated vacancies. Moreover, the respondent did not make any appointment against the post in Gangrar court during the life of one year of the aforesaid penal/merit. Since the vacancies of Gangrar court become available in the year 2002, they should have been filled in from amongst the candidates selected pursuant to the notification dated 15.7.2002. The case of the petitioner is that since the penal prepared pursuant to notification dated 10.5.2001 has expired upon completion of one year from the date of declaration of the final result, 8 posts of Gangrar court could not have been filled in on the basis of the select list prepared pursuant to advertisement. Rule 19 (III) of the Rajasthan Subordinate Court Ministerial (Amendment) Rules, 1999 (in short the rule of 1999) specifically provides that if any candidate from the select list has not been given appointment within one year from the date

of declaration of result, his name shall be removed from the register of recruited candidates. The period of one year should be taken to have commenced from 30.10.2001 when the final result of selection was declared and expired on 29.10.2002. There was a stay order for making of appointment pursuant to the selection in question in S.B. Civil Writ Petition No.3030/2002- Shiv Kumar Vs. State, on filling up six posts which were advertised vide notification dated 10.5.2001, but the stay order was later vacated. The petitioner referred to Rule 15 of the Rules of 1999 according to which in each year or as the circumstances may require, each district judge shall recruit as many as candidates for his judgeship as required for the vacancies likely to arise in the course of the year but when the notification was issued on 10.5.2001, the court at Gangrar was not created and therefore there was no question of vacancies being there and thus such vacancies could not be included in the determination of the relevant year. Those vacancies ought to have been filled up pursuant to advertisement dated 15.7.2002. In other words, the case of the petitioners was that if 8 more appointments were given in

selection held on the basis of notification dated 15.7.2002, the petitioners would have been appointed in service. Moreover, the respondent did not follow the rules for granting appointments to the candidates. It is contended that even out of 34 candidates appointed by the respondents, 8 candidates either did not join or left the service after joining. Besides the respondent during the currency of the penal/merit list also gave promotion to as many as Class IV employees to the post of LDC which also indicated that posts were available with them. It has also been contended that the respondent while making appointments has not followed 100 point roster meant for appointment for the post of reserved category i.e., SC/ST. It is with these facts that the present writ petition has been filed with the aforesaid payers.

The sole respondent has contested the writ petition and has contended in the reply thereto that the same controversy relating to the very same advertisement dated 10.5.2001 has already been adjudicated upon by the Division Bench of this Court in D.B. Civil Special Appeal No.656/2004 – Laxman

Prasad Sharma Vs. District & Sessions Judge, Pratapgarh & Ors. alongwith four other similar matters, decided on 2.3.2005. In that case, pursuant to the advertisement dated 15.7.2002, appointments were given to as many as 14 candidates by order dated 19.7.2002 and by subsequent order dated 2.12.2002 again 15 more selected candidates were appointed. It was thereafter that four more candidates were appointed by order dated 10.1.2003 and lastly one candidate was again appointed by order dated 20.1.2003. It was in this manner that total 34 successful candidates were given appointment on the post of LDC on the basis of selection held pursuant to advertisement dated 15.7.2002. The aforesaid select list/merit list was cancelled by the respondent by order dated 1.9.2003 as according to the provisions of the Rule 19(III) of the Rules of 1956. Since the life of the select/penal list prepared pursuant to advertisement dated 15.7.2002 came to an end and the penal was formally cancelled vide order dated 1.9.2003, there was no question of now appointing the petitioners. The respondents have denied the assertion that 100 point roster has not been followed by the respondent while giving

appointment against the reserved posts. It has therefore been prayed that the writ petition may be dismissed.

I have heard learned counsel for the parties and perused the record.

Learned counsel Shri Rakesh Arora appearing for the petitioner has also supplemented his arguments by written submissions. The core question that rise for consideration is whether the appointment can be claimed as a matter of right merely on the basis of placement of candidate in the select panel particularly when such appointment have not only been made against the number of vacancies advertised but also in excess thereto. Shri Rakesh Arora, learned counsel for the petitioner has in this connection placed reliance on a number of judgments of the Hon'ble Supreme Court and more particularly in Gujarat State Dy. Executive Engineers' Association vs. The State of Rajasthan & Ors. JT 1994 (3) SC 559. As regards argument that 100 point roster was not followed in making appointment in question, the respondent categorically denied

the arguments and have asserted on oath that while making appointment in question, they have followed the 100 point roster and therefore there is no reason to disbelieve them.

It is trite law that when the selected candidates are not appointed they have no right to claim for appointment because mere selection by itself does not create any right in favour of the selected candidates. Right of those who did not appear in the merit list or the select list, but in the waiting list is still inferior to the formal category of candidates. Their Lordships in State of U.P.Vs Bibkhakar Dwivedi & Ors (2003) 12 SCC 62 while considering the somewhat similar question observed in para no.11 of the judgment as under: -

> "11. The general principle of law as has been established and followed repeatedly by this Court is that even those candidates whose names are included in the merit list do not have a vested right to be appointed (see Shankarsan Das vs. Union of India). The decision relied upon by the High Court and which has been cited before us, namely, Jai Narain Ram v. State of U.P. had been rendered in connection with the case of Scheduled Caste candidates. It was held in that case that scheduled Caste candidates who were in the waiting list could be directed to be appointed against the reserved

> category when vacancies were created in such reserved category by reason of the successful candidates not joining the post. The reasoning is based upon Article 14 read with Articles 16(1) and (4) of the Constitution."

Recently again in Secretary, A.P. Public Service Commission Vs. B. Swapna & Ors (2005) 4SCC 154 their lordships of the Hon'ble Supreme Court while considering the cases in Prem Singh Vs. Haryana SEB (1996) 4 SCC 544 and State of J& K vs. Sanjeev Kumar (2005) 4 SCC 148 held that there are two settled principles of service law, firstly, there cannot be appointed beyond advertisement and secondly also selection can be altered after the selection process is started.

This question however should not detain me any longer because the Division Bench of this court in Laxman Prasad Sharma (supra) on consideration of the Rules of 1996 held in para no.11 as under: -

> "11. In the instance case, as far as Pratapgarh judgeship is concerned, a perusal of Annex.R/1 shows that 23 vacancies for which the subsequent

> advertisement was issued, had arisen because of the future event. Due to inter-district transfer on 22.5.2001, 3 vacancies had fallen vacant and 2 posts on 4.7.2001 due to promotion of 2 LDCs. By other inter district transfer orders dt. 15.12.01, 30.1.02 and 1.2.2002, 7 posts of LDCs had fallen vacant and one post fell vacant on 16.3.02, 3 posts fell vacant on account of deaths, 3 vacancies on account of voluntary retirement and one resignation. Thus, these vacancies cannot be said to be likely or anticipated vacancies. Sub Rule (III) of Rule 19 of the Rules of 1986 also does not advance the case of the appellants. This rule only provides that if a candidate from the select list is not appointed within a period of one year, his name shall be struck off from the bound register maintained under sub-rule (1) of Rule 19."

In view of the aforesaid discussions, I do not find any merit in this writ petition and the same is therefore dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-